BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of: **TRANSERVICIOS S.A. de C.V.,** **Respondent.**	**Docket No. FMCSA-2010-0261**[1] **(Southern Service Center)**

ORDER REQUIRING CLAIMANT TO SUBMIT EVIDENCE

1. Background

On January 16, 2009, the Texas Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Transervicios S.A. de C.V., proposing a civil penalty of $2,180 for one alleged violation of the Hazardous Materials Regulations (HMRs). Specifically, the Notice of Claim, which stated that it was based on a November 25, 2008 inspection of one of Respondent's motor vehicles at El Paso, Texas, charged Respondent with one violation of 49 CFR 391.11(b)(5), for using a driver without a currently valid motor vehicle operator's license or permit. The Statement of Charges section of the Notice of Claim alleged that Respondent used a driver to drive a commercial motor vehicle in interstate commerce from Cuidad Juarez, Mexico to Hiroshima, Japan on November 25, 2008.[2]

By letter dated February 13, 2009, Respondent replied to the Notice of Claim, requesting administrative adjudication and contending that its driver did have a currently valid motor vehicle operator's license, which he presented to the inspector at the border

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[1] The prior case number of this matter was TX-2009-0041-US1215.

[2] See Government Exhibit A to Field Administrator's Consent to Hearing Request (Claimant's Consent).

when it was requested. Respondent maintained that the Secretaria de Communicaciones y Transportes (SCT) in Mexico did not properly enter the license information into FMCSA's database. Respondent stated that its driver, who had had a state license, applied for a federal license, in mid September of 2008. Respondent implied that the federal license was an international license necessary for providing transportation in the United States. Although the application was approved, the back of the license did not state that it was an international license. Respondent submitted a letter from the SCT, which, Respondent contended, took responsibility for the error.[3] Respondent appears to be making two arguments: (1) that the SCT did not enter accurate license information into FMCSA's database; and (2) the SCT did not provide accurate license information on the back of the driver's license.

If Claimant, the Field Administrator for FMCSA's Southern Service Center, desired to object to a request for hearing, his objection was required to have been served no later than April 20, 2009.[4] Claimant failed to meet this deadline, not objecting to what he considered to be a request for a hearing until July 26, 2010. Notwithstanding the title in his pleading, "Field Administrator's Consent to Hearing Request," Claimant stated that he objected to the request. Claimant explained that he consented to the request for hearing because he had missed the deadline for an objection, but indicated that he would "be filing a Motion for Final Order showing that there is no genuine issue of material fact

[3] See Government Exhibit B to Claimant's Consent. The font of the letter from the SCT is very small, however, and many of the words are not legible. Therefore, I am unable to conclude that the letter says what Respondent claims it says.

[4] See 49 CFR 386.16(b)(2), 49 CFR 386.8(b)(3), and 49 CFR 386.8(a), which provide, respectively, 60 days from the date of service of the reply for serving an objection, an additional five days for mailing, and an additional day when the time period ends on a Sunday.

in this matter."[5] Claimant also acknowledged that "Respondent did not specify the particular administrative adjudication sought, e.g. arbitration, hearing request."[6]

2. Decision

Claimant's pleading – objecting to a hearing request but calling it a consent because he missed the deadline for an objection – mocks the Agency's Rules of Practice. "Failure to serve an objection within the time allotted may result in referral of the matter to a hearing."[7] Despite Claimant's attempt to cover over his failure to timely object to a hearing request by calling it a consent, his delay would typically result in this matter being assigned for a hearing.

As Claimant noted, however, Respondent did not specify which form of administrative adjudication it was seeking. Although Claimant provided two options – arbitration and hearing request – arbitration clearly would not work because Respondent denied the charge.[8] There is a third option, which Claimant omitted from his pleading – a request to submit written evidence without a hearing.[9] It is clear to me that this is the option that Respondent intended. Not only did it submit a narrative of the events that transpired, but it also submitted exhibits to support the narrative. Thus, Respondent actually submitted the evidence earlier than required. Claimant, who should have submitted evidence by April 20, 2009, failed to submit any evidence.

Although I am tempted to dismiss this matter because Claimant missed the deadline and because he attempted to cover the error by saying one thing while intending

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[5] Field Administrator's Consent to Hearing Request (Claimant's Consent), at 2.
[6] Claimant's Consent, at 1-2.
[7] See 49 CFR 386.16(b)(2).
[8] See 49 CFR 386.14(b)(3).
[9] See 49 CFR 386.14(d)(1)(iii)(A).

another, precedent leads me to decide otherwise. I have previously found that dismissing a matter because Claimant failed to meet the deadline for serving his evidence when Claimant did not realize that Respondent had submitted its evidence as part of its reply would be unfair to Claimant and "would preclude a decision on the merits, which the revised Rules of Practice are attempting to avoid.[10] Although I question how Claimant could not have realized that Respondent was submitting its evidence with its reply, I will allow Claimant the amount of time to submit his evidence that 49 CFR 386.16(a)(1) provides following service of a reply. Accordingly, Claimant will have 60 days from the date of service in which to serve his evidence and argument.[11] In that same time frame, Respondent should submit a legible letter from the SCT.[12] Respondent will have 45 days following Claimant's submission of evidence in which to serve additional evidence and argument, pursuant to 49 CFR 386.16(a)(2).

It Is So Ordered.

Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

8.30.10
Date

[10] *See, e.g., In the Matter of Da Ha Trucking, Inc.*, Docket No. FMCSA-2010-0040, Order Denying Motion for Default and Requiring Claimant to Submit Evidence, April 9, 2010, at 3.

[11] Claimant need not style the pleading a Motion for Final Order, which is what he would file were he trying to avoid a hearing. There is an issue of fact in dispute – whether the driver had a valid license – and had Respondent requested a hearing, a hearing would have been ordered. In his evidence and argument, Claimant should explain why Respondent was charged with the extraordinary feat of driving from Mexico to Japan in a single day.

[12] If Respondent did desire a hearing instead of submitting written evidence without a hearing, it should so state.

CERTIFICATE OF SERVICE

This is to certify that on this 31 day of August, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Robert B. Houston Vice President Transervicios S.A. de C.V. 1450 Pendale Suite 1-2 El Paso, TX 79936	One Copy U.S. Mail
Matthew J. Hardy, Esq. Trial Attorney Office of Chief Counsel (MC-CCE) Federal Motor Carrier Safety Administration Southern Service Center 1800 Century Blvd., NE, Suite 1700 Atlanta, GA 30345	One Copy U.S. Mail
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The Honorable Ronnie A. Yoder Chief Administrative Law Judge Office of Hearings, M-20 U.S. Department of Transportation 1200 New Jersey Avenue, S.E. East Building Ground Floor Room E12-320 Washington, D.C. 20590	One Copy Personal Delivery

FMCSA-2010-0261

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